1914

Some Recent Developments in the Department of Law

Henry M. Bates
University of Michigan Law School

SOME RECENT DEVELOPMENTS IN THE DEPARTMENT OF LAW

The present continues to be a period of rapid and interesting development in legal education. The criticisms to which the law and its administration by courts and lawyers have been subjected during the last few years very naturally and properly has led to a careful reconsideration of existing methods of legal instruction in the hope that they might perhaps be improved. The truth is that scientific legal education, comparatively speaking, is still in its infancy both in England and in the United States. Instruction in law of the dogmatic and supposedly purely practical kind has long been carried on efficiently in both countries, but until quite recently it has been for the most part of that rigid and uninspiring kind which led Maitland, the famous English legal scholar to say that "Taught law is tough law." But during the last few years the better law schools have been active in inaugurating and developing a plan of legal instruction which shall be philosophical as well as practical and which shall therefore train their students in such manner as to make them more disposed and better able to adapt law to the changing conditions and requirements of contemporary society.

While the Faculty of the Department of Law of this University has continued to develop its curriculum and its instruction along the lines indicated in an article which appeared in the April number of THE ALUMNUS for 1913, it has also endeavored to keep in sympathetic touch with the developments in financial, industrial and social matters and to adapt its instruction thereto. The truth is that at least in any professional school the constantly changing conditions in the world at large require constant changes, though usually of a minor sort, in the scheme of instruction. These changes, however, should be carefully correlated to the general scheme and made consistent and harmonious with the main feature of a general policy which any good school soon establishes for itself. A number of such minor changes in some of the courses and in the administrative methods might be mentioned but perhaps it will be better in the limited space available to speak of only one feature of our work during the year which has just elapsed.

The Faculty of the Michigan Law School, as is well known, has believed that the systematic teaching of practice and procedure and the maintenance of a practice court scientifically conducted for educational purposes (not for mock rehearsals) should be a component part of every broad law school curriculum. The main features of our practice department, including the court work, are well known to those of our alumni who are interested in matters of legal education. But each succeeding year has seen a continued development and perfecting of his work. It has indeed become a characteristic feature of the law school, which fact is so well known that at the recent meeting of the Association of American Law Schools held in conjunction with the American Bar Association at Montreal the practice courses and the practice court were spoken of by men from other schools as the "Michigan plan." While every care has been exercised to make this work as efficient as possible, equal care has been taken to properly subordinate the

work to the general curriculum, and we feel confident that it does not take an undue part of the student's time. The fundamental reasons for our belief in the value of this department of legal instruction are admirably set forth in a paper by Professor Edson R. Sunderland read at the meeting of the Association of American Law Schools above referred to and printed in the January, 1914, number of the *Michigan Law Review*.

The teaching of practice and the maintenance of a practice court have found places in nearly all of our law schools and many of them are modeled more or less after the Michigan department. But the faculties of a few of our good law schools do not believe that instruction of this kind has a proper place in a law school course. Thus the dean of a leading law school in his last annual report, after describing the efforts which have been made to extend and improve the work of the voluntary moot courts which are conducted in his school, argues that making the work compulsory tends to deprive the student of his zest and interest in this work. We are quite sure that if this dean could spend a day or so in the Michigan school he would become convinced that this argument is without foundation. In fact, there is absolutely no trouble on this score. The interest of students in a properly conducted and efficiently controlled court never lags. To our Faculty it would seem that if it is worth while to have moot courts and so much worth while that increasing faculty supervision is resorted to, in order to extend their benefits, the conclusion that the work of supervision and regulation should be given only into experienced hands and the work correlated with the other work of the Department, is unavoidable. Law students themselves cannot possibly conduct these courts in the most efficient way or bring out the full value of practice court work, and it is almost equally impossible for even experienced lawyers who are not devoting themselves to the work of legal education to do so. Those who have opposed the practice court idea seem not to realize that that idea cannot be worked out to the point of highest efficiency except after years of development and experience in the school. The more thorough regulation of practice court work which can be given by a corps of experienced *law teachers* does not result, as has been argued, in taking an increased amount of the student's time or energy. On the contrary, the better system saves time and yet conduces to a higher grade of work by the student and to a more thorough, better proportioned and scientific study of the problem involved.

It has also been argued that the practice court is not worth while because procedure, while it has been exceedingly important during the last fifty years, is in the process of simplification and that therefore intensive study of it is unprofitable. Granted that the tendency is as thus stated, it is quite certain that procedure will not be reduced to simplest terms for many years to come and that always it will be an important part of lawyers' work. Furthermore, the teaching of practice and procedure with the practice court adjunct, particularly in a school with a national constituency like Michigan's will surely be of the greatest value in bringing about this simplification and reform in procedural work. In the Michigan court the procedure of all or nearly all of the states of the Union has been carefully studied by members of the Faculty engaged in practice work. They have

thus acquired a basis for comparison of systems of the utmost value for the purpose of suggesting specific reforms. Moreover, students studying procedure and trying their practice court cases under the archaic systems still in vogue in some states such as Illinois, compare notes with other students in the same class who are trying their cases under the improved and simplified procedure in force in such states as Michigan and New Jersey. The comparisons which are made in this way tend to produce exponents of reform in the generation which probably will work out this problem.

The Faculty of Law has now decided upon a further step in this direction. This step consists in the offering of a course entitled "A Comparative Study of Modern Procedural Reforms," to be given in 1914-15 and thereafter by Professor Sunderland. This course will include an analysis of the present English system, the New Jersey Practice Act and the Chicago Municipal Court Act, and a comparison of these with the Common Law and Code Systems and with the more important systems of Continental Europe. The course will be open only to those who have already had the courses in common law and code pleading, evidence and trial practice.

This course it is believed is the first of just this kind offered either in this country or in Europe. The Faculty believes that the course will not only be of great practical value to the lawyer engaged in active legal business but that it will be a contribution to the study of an interesting contemporary problem and that the men who shall have had the benefit of it are likely to become leaders in an important reform. H. M. BATES, '90